



August 25, 2004

**Re: Annual Assessment of the Status of Competition
in the Market for the Delivery of Video Programming,
MB Docket No. 04-227 – Reply Comments**

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

The following Reply Comments are provided in connection with the FCC's Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 04-227.

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I. More Information Required on Status of Independent Networks

On July 23, 2004, The America Channel submitted its comments regarding matter 04-227. The America Channel reiterates its request that the Commission require cable operators to report as to the criteria which cable operators use to determine whether to provide carriage to an independent programming network, an MSO-owned network, and a conglomerate-owned network; and what new inquiries cable operators received from independent networks and non-independent networks in the past 12 months. The information should include:

- (a) how many independent networks have secured carriage in the past 12 months;
- (b) how many independent networks have requested carriage in the same period;
- (c) how many networks of conglomerates and MSOs have secured carriage in the past 12 months;
- (d) how many networks of conglomerates and MSOs have requested carriage in the same period;
- (e) whether and to what extent new carriage was provided to conglomerate-owned or MSO-owned networks on a system by system basis; and
- (f) whether any conglomerate-owned or MSO-owned networks were upgraded from digital to analog on any cable systems.

The filing by cable operators of Form 325, which requires a listing of channels and packages offered, is insufficient for the Commission to determine health of competition, prospects for new competitors, ownership, and any disparate treatment (of independents and non-independents) in the process and requirements of securing carriage. Further, we are informed that the entity filing Form 325 can request that its submission be kept from public disclosure. Finally, if some in the industry oppose a la carte because they claim it would “stifle new and emerging networks,” then a scorecard is necessary to monitor and determine whether such prediction would prove accurate.

In any inquiry by the Commission with respect to competition in the MVPD space, including a la carte and industry consolidation, we believe access to the above information would be necessary in order to fully assess the state of competition.

II. Incentives for Operators Who Carry Independent Networks

Based on the information we believe the Commission should assemble, the Commission could compile a “scorecard” assessing the extent to which each cable operator provides access to independent networks. That scorecard could then be used by Congress to create a system of incentives and rewards (rather than penalties) to cable operators that proactively demonstrate leadership, promote competition, serve the public interest and make available quality, family-friendly independent networks that consumers want.

For example, Congress could use the Commission’s scorecard to provide cable operators that embrace independent networks, with: (a) loan guarantees at preferential terms, for upgrade of infrastructure to digital cable; and (b) tax incentives.

We ask the Commission to make recommendations to that effect to Congress.

III. Conclusion

The America Channel asks the Commission to encourage the measures identified above.

Sincerely,

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